

Both issues deal with people with severe mental impairment. This bill would level the playing field for all people with severe mental impairment.

Defendants will have to meet a very stringent threshold that they had a severe impairment at the time of the crime. They will have to prove they had the impairment at the time of the crime; their impairment will have to be confirmed by mental health professionals that are highly skilled at diagnosing mental illness and level of impairment.

Less than 1% of all people convicted of a capital crime actually receive the death penalty. This past year only one person in NC was sentenced to death. We have a growing consensus that the death penalty shall be reserved for the worst of the worst and that people with severe mental disabilities are not the worst of the worst.

Sen. Kinnaird introduced Professor James Ellis, Professor of Law at the University of New Mexico. Professor Ellis argued the Atkins mental retardation case before the US Supreme. He won the case which is the law of the land. We are using the mental retardation case as a model for the bill on exempting the death penalty for people with severe mental illness.

NC had the most dramatic impact on the U.S. Supreme Court as it heard the Atkins case because North Carolina was one of the original litigants. The case was half way through the briefing when NC passed their mental retardation statute. When North Carolina pulled out as one of the litigants, the significance was not lost on the Court.

The goal with regard to this legislation is to find a workable solution to the problem of people who have severe mental illness who find themselves charged with a capital offense. The first duty is to protect the public but also to attempt fairness in the cases with people who may have severe mental illness and to reserve the death penalty should be reserved for the people who are at the highest level of culpability. A major consideration is how to take the resources devoted to capital punishment and direct it toward the people who are most responsible for their actions.

The centerpiece of North Carolina's legislation which has served as a model to other states in how to make it work is: NC chose to make available a pre trial determination rather than delaying it to the trial or after the trial, involvement of good expert evaluation early in the process and having them inform directly the court of their clinical findings, and the focus on negotiation and consensus rather than on partisan litigation. These features help reduce the cost of contentious litigation.

These features work for mental retardation and can also be used as a model for the legislation regarding the mentally ill. The issue of mental illness in the proposal before you deals with people whose impairment is extraordinarily substantial and global. It requires the drafters and lawyers and courts to draw a line at which point a person would be exempted from the death penalty – a very small subset of the mentally ill.

The vast majority of people with mental illness or even severe mental illness never come into contact with the court system. But, severe mental illness can have a direct impact on